

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-1054

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Pg 5

UNITED STATES CIRCUIT COURT OF APPEALS
SECOND CIRCUIT

THE UNITED STATES OF AMERICA,

Respondent,

-vs-

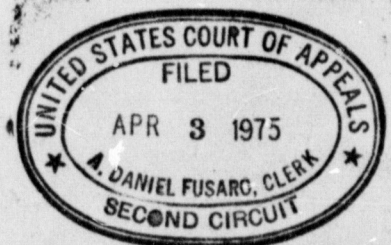
JACKIE L. HARRIS,

Appellant.

AND APPENDIX
BRIEF of the Defendant-Appellant

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STATEMENT

This is an appeal from a judgment of the United States District Court, Western District of New York, Hon. Harold P. Burke, presiding, which on February 10, 1975, sentenced Mr. Harris to a term of eighteen months imprisonment upon his conviction, after a jury trial, of one count of Indictment Number 1973-192.

He was originally charged with five separate violations of 18 U.S.C. 2314, but the jury deadlocked upon the remaining four counts.

ISSUES PRESENTED

1. QUESTION: Was a money order a security within the meaning of 18 U.S.C. 2311?

ANSWER: The lower court held that it was.

2. QUESTION: Did the government make out a prima facie case showing that Mr. Harris committed a Federal crime?

ANSWER: The lower court held that there was sufficient proof that a Federal crime had been committed to be able to send the case to a jury.

3. QUESTION: Assuming that there was proof that a Federal crime had been committed,

was the proof sufficient, as a matter of law to make out a prima facie violation of 18 U.S.C. 2314?

ANSWER: The lower court held that the proof was sufficient to make out a prima facie violation of 18 U.S.C. 2314.

4. QUESTION: Did the lower court commit error in receiving other money orders and testimony concerning mail theft in evidence?

ANSWER: The lower court held that no error was committed, when these items were introduced into evidence.

5. QUESTION: Was the testimony of one of the witnesses so incredible as a matter

of law that it ought to have been stricken?

ANSWER: The lower court held that it was not incredible as a matter of law.

6. QUESTION: Did the lower court commit error, when it permitted the introduction into evidence of photocopies of each and every money order that had been dishonored, including ones which were not introduced into evidence?

ANSWER: The lower court held that it did not commit any error.

FACTS

On February 11, 1971, seventy seven Travellers Express money orders, hereinafter "money orders" were stolen from Galina's Grocery Store, in Rochester, New York.

Although there is dispute as to who took the money orders, there is no dispute that the serial numbers of Exhibits "1" through "25" correspond with the list of stolen money orders that were furnished the Travellers Express Company, hereinafter "Travellers".

On February 12, 1971, a money order (Exhibit "1") was negotiated at the Sears Roebuck Company, Rochester, New York, together with a Sears payment bill from the account of Laverne Gray. It is undisputed that Mr. Gray's bill was paid, and that

\$40.00 change was received as a credit to the account of Mr. Gray. Subsequently, when the money order was returned to Sears, Mr. Gray's account was debited that amount.

On February 15, 22, and 23, 1971, money orders (Exhibits "2", "4" and "3" respectively) were cashed at a local food store in Rochester, New York.

In March, 1971, a money order (Exhibit "5") was cashed at a Rochester branch of the J.C. Penney & Company store.

Subsequently, these money orders (Exhibits "1" through "5") were presented for payment at the Security National Bank of Fairbault, Minnesota. They were sent to Travellers and each and every one of these (as well as the remaining money orders entered as Exhibits) were dishonored and stamped across the face "Payment Refused - Money Order Stolen".

A close factual question was presented,

as Mr. Harris took the stand and denied stealing the money orders or having any connection with them.

It is undisputed that on each of Exhibits "1" through "5" and "26", there are one or two fingerprints of Mr. Harris. While there was testimony that Mr. Harris stole all of the money orders, there was no proof linking Mr. Harris to the forging, negotiation or cashing of the above Exhibits, which formed the basis of counts one through five of the Indictment.

To bolster its case, the government introduced money orders (Exhibits "14" - "18", "21", "22") which were part of the money orders that had been stolen and which were cashed at Rochester, New York, and returned to the point of original negotiation as being stolen.

It is undisputed that there was no testimony linking Mr. Harris to the forg-

ing, negotiation or cashing of these instruments, and there were no fingerprints upon them.

Finally, by way of further bolstering its case, the government introduced a money order (Exhibit "23"), which had been made out to Jacqueline Simpson Smith.

Under a grant of immunity, she testified that Mr. Harris had stolen the money orders, when "he reached over the counter and got the money orders and left." (P. 43, F. 8)

Although her testimony could not tie Mr. Harris to the charges in the indictment, she did testify that she took Exhibit "23" and that she and others went to Sears Roebuck & Company and cashed it on February 10 (P. 43, F. 25) and gave \$50.00 of the proceeds to Mr. Harris. It should be noted that negotiation of this Travellers Express money order took place prior to the theft

of the seventy seven other money orders.

Although the government could not prove how Mr. Harris came into possession of the payment slip for Sears Roebuck, which had been sent to Mr. Gray, the government did permit Mrs. Smith to testify that she and Mr. Harris would drive around Rochester, stealing mail from mail boxes looking for "checks or whatever," (P. 44, F.18).

It is undisputed that handwriting exemplars were taken from Mr. Harris, by the F.B.I. However, there is no testimony that Mr. Harris' writing compared with the writing on any of the instruments. Although there was testimony that Mr. Harris had been sold a typewriter (P. 41, F. 23 - P. 42, F. 7), there was no testimony linking that or any other instrumentality used to forge money orders to defendant.

With the exception of the testimony relating to Exhibit "23", there is nothing

to show that Mr. Harris profited or received any money. And, as previously mentioned, Exhibit "23" does not form the basis of any count of the indictment.

Mr. Harris testified that he did not steal or have any connection with any of these instruments. He could only explain the presence of his fingerprints by suggesting that Mrs. Barnes, an accomplice of Jacqueline Simpson Smith, rented a room from him, and that in the process of straightening things on Mrs. Barnes' dresser, his fingerprints might have found their way onto these exhibits.

POINT I

A MONEY ORDER IS NOT A
SECURITY WITHIN THE MEANING
OF 18 U.S.C. 2311.

Section 18 U.S.C. 2311 provides that, for the purposes of the Stolen Property Act, a security is defined as a check, draft, travellers check, together with many other items of indebtedness, warehouse receipts, many of which share the similar feature of negotiability, but all of which seem to be different instruments and entities unto themselves.

Significantly, the word "money order" has been omitted from the several items constituting "securities". A close examination of the statute that Congress has most carefully included certain items and very carefully excluded others.

It does not appear that Congress

intended to protect all negotiable instruments, for if it had, it certainly could have concluded, at the end of the definition, that this Section included not only the foregoing, but "all other negotiable instruments not previously mentioned".

As 18 U.S.C. 2311 separately includes travellers checks as well as checks, and does not make one the sub-class of another, it would appear that there is no effort to make all inclusive categories under the general heading of "drafts" or "checks".

Further, it appears that a money order is a distinct and separate specie of financial instrument, which has been recognized as being distinct from other types of instruments. The Encyclopedia of Banking and Finance, Seventh Edition, Banker's Publishing Company, Boston (Money Order - P. 581), defines a money order as:

a form of credit instrument calling for the payment of money to the named payee, which provides a...means of remitting funds by persons not having checking accounts.

In looking at the definition of a "draft", the Encyclopedia of Banking and Finance, Supra, does not include the word "money order" and defines a draft as "a written order...to pay, (Encyclopedia of Banking and Finance, P. 282).

That source indicates that a draft is a bill of exchange arising out of a commercial transaction in which the buyer and seller are located at different points.

The Encyclopedia Britannica, Volume 15, 1973 Edition, P. 73, gives a similar definition for a money order, and indicates that these have been in existence for a

long time. There is no statement that these are a sub-species of drafts.

It appears that "Travellers" has been most careful to preserve these distinctions. A close examination of the money order exhibits, in this case, reveals that they are called "money orders". On the rear of the instrument, the words "money order" appears four times, together with the language that "this is not a presigned draft or a travellers cheque".

Mr. Eugene Lewis, the Safety Control Manager of Travellers, verified that a money order was not a check or a draft, and that it was a completely separate type of instrument (P. 119, F. 2, et. seq.).

The case law in this area is not too instructive, and most of the cases that deal with this matter all assume that a

money order is a security and do not decide the problem raised here.

The most complete statement is found in U.S. -vs- Nelson, 406 F. 2d 1136 (1969, 10th), where the court decided:

...this contention
/that a money order
is not a security/
is grounded upon the
fact that although
the definition of a
security is somewhat
broad, there is no
specific reference to
money orders. Never-
theless, it is clear
that a money order is
an "evidence of an
indebtedness" and
therefore, included
within the statutory
definition.

(406 F. 2d 1136, 1138)

However, this does not answer the problem, as a money order is not an instrument of indebtedness, as the primary relationship is payor - payee and

not debtor - creditor. There has been no exchange of consideration for a promise to pay, no interest involved and no other indicia that would make a money order an instrument of indebtedness.

Other courts have, in fact, done the same thing, and have not given any meaningful discussion as to how they arrived at their finding, see, e.g. U.S. -vs- Castle, 287 F. 2d 657 (5th Cir. 1961); U.S. -vs- McGee, 402 F. 2d 434 (10th Cir. 1968).

The most recent case in this Circuit, U.S. -vs- Braverman, 376 F. 2d 1136, cert. den. 389 U.S. 885, does not decide the matter either. It should be added, though, with respect to that case, that the issue was not raised.

In the instant case, defendant excepted to the court's charge that a money order was a security (P. 209, F. 9, et. seq.) and defendant respectfully submits that there

is a definite gap in the legislative scheme, which it is up to Congress to fill, and that there is no precedent for this court to decide that a money order is a security. It may very well be that it was the Congressional intent to leave this question of money orders to the State courts for enforcement under state law.

POINT II

AS A MATTER OF LAW, THERE
WAS NO PROOF THAT DEFEND-
ANT COMMITTED A FEDERAL
CRIME.

There was no proof showing that
defendant committed a violation of 18
U.S.C. 2314.

18 U.S.C. 2314 is derived from the National Stolen Property Act of May 22, 1934 (48 Stat. 794).

In 1939, the third paragraph of this section was added to the entire statute with the express deletion of the specific words , "stolen, converted or taken by fraud".

In a report of the Senate Committee on the Judiciary, Senate Report 674, 76th Congress, First Session (1939), the Congress indicated that it wished to reserve to the respective states the jurisdiction over the thefts of securities having a value of less than Five Thousand Dollars.

With respect to counts one through five, the government, on its case, can only prove that they were stolen and negotiated, but can only link Mr. Harris to them by way of showing that he may possibly have been the thief, in accordance with the

testimony of Mrs. Smith (P. 43, F. 3, et. seq.). There is no proof that Mr. Harris forged, negotiated, altered or in any way put these instruments into interstate commerce.

With respect to Exhibit "23", an alleged prior or similar act used to prove count one, it cannot show that defendant committed the crimes alleged, as there is no testimony that shows a particular plan, design, scheme, use of any instrumentalities or any other thing, which establishes that Mr. Harris negotiated that instrument. At best, the statement, if it is to be believe, that Mr. Harris received money from the negotiation of Exhibit "23", does not prove that he committed a Federal crime.

Even to assume, arguendo, that Mr. Harris stole these instruments, no Federal crime has still been made out. At best,

this would be a larceny of property punishable under the laws of the State of New York. Since there is no proof that the items were stolen in Rochester and transported, as stolen goods, across the State line, let alone proof of the threshold valuation of \$5,000.00, the government's case must fail under another section of 18 U.S.C. 2314.

Finally, although the statute does not require that there be a proof of loss, it would appear to be impossible to commit a crime merely by passing forged, altered or falsely made documents across a state line, unless someone parted with consideration for the instruments.

In the instant case, Mr. Galina and Mr. Lewis did not indicate that their business lost any money. Sears Roebuck and Company did not show that it had

lost any monies by virtue of these transactions. Therefore, with respect to count one, there is no proof that any loss was sustained by anyone.

With respect to count five, the J.C. Penney Company did testify as to a loss, but, the jury was unable to reach a verdict with respect to that count. Appellant submits that all of this ought to be taken into consideration when the court makes its decision.

POINT III

THE GOVERNMENT FAILED
TO MAKE OUT A PRIMA
FACIE CASE ESTABLISHING
DEFENDANT'S GUILT.

A. THE PROOF WAS INSUF-
FICIENT AS A MATTER OF
LAW

Even with the inclusion of the other Exhibits, the testimony of Jacqueline Simpson Smith, and the proof of other acts of a prior and similar nature, of which more will be said, there was not sufficient evidence to permit this case to go to the jury. Defendant's motion to dismiss at the conclusion of the government's case should have been granted.

All of the cases, which have considered the problem of proof in the area of stolen money orders, have set far greater requirements for proof of guilt than this case.

Convictions have been upheld, on appeal, where eye witness identification linked appellant to the theft of money orders, or eye witness identification linking appellant to the forging, endorsing, or cashing of money orders, and where hand writing examples have matched the forged endorsement, see, e.g. U.S. -vs- Davis, 434 F. 2d 1108

(8th Cir. 1970).

Or, where appellant made a false, exculpatory statement, and the police found a machine used for validating money orders in his possession, the Court sustained the conviction, U.S. -vs- Smith, 452 F. 2d 638 (4th Cir. 1971). This case was cited by the United States government, in the instant case, as holding that a money order was, in fact, a security, a position which appellant disputes, (P. 171, F. 13, et. seq.).

In U.S. -vs- Adams, 454 F. 2d 1357 (7th Cir. 1972), the proof showed that Adams, with two other testifying co-defendants, used Adams' car to travel about the country passing forged money orders. These were prepared in the presence of Adams, who split the proceeds with the other individuals. Testimony established that the three money

orders used to prove the indictment were negotiated for repairs on Adams' car, payment for Adams' motel accommodations, and were used by Adams to purchase meat.

In an unusual situation, a circuit court upheld a conviction where defendant raised the dollar amounts on money orders and deposited them into a corporate bank account, of which he was one of the two authorized persons permitted to draw checks upon. The proof showed that the balance in the checking account was small, prior to the deposit of the money orders altered to extraordinarily large amount, and that defendant had written checks to himself made payable to "cash". The circuit court sustained this conviction, U.S. -vs- Blair, 456 F. 2d 514 (3rd Cir. 1972).

In U.S. -vs- Rogers, 475 F. 2d 821 (7th Cir. 1973), there was testimony that Rogers helped to plan the distribu-

tion of forged money orders and he was also seen forging several of them. In this case, there were hand writing exemplars, together with other testimony indicating that there was a two month period over which these transactions took place. In U.S. -vs- Nelson, 273 F. 2d 454 (7th Cir. 1966), there was testimony that Nelson showed a book of blank money orders to three other people, and the four of them agreed to cash them and split the proceeds. One of those witnesses testified that in his presence, Nelson filled in a money order blank with a fictitious name. The circuit court sustained the conviction on appeal of this case, as well as the preceding one.

In U.S. -vs- Castle, 287 F. 2d 657 (5th Cir. 1961), defendant exhibited stolen money orders to other people and the police obtained a search warrant for

Castle's hotel room, based upon that information. Upon executing it, they found blank money orders with fictitious senders and payees names already filled in, along with other indicia of crime.

In the instant case, there is no proof that defendant forged, altered, or cashed one of these exhibits. There is no proof of a corrupt scheme connected with Exhibits "1" through "5" and no eye witness identification of defendant. There are no hand writing exemplars, or any other means of proving defendant's involvement.

With reference to U.S. -vs- Braverman, supra, this Court had more facts to deal with.

Braverman obtained stolen money orders. Then, he affixed his own name upon six of them, and affixed other names upon others.

In that case, the government had a confession, hand writing exemplars, and the testimony of the cashier, in the foreign exchange firm that cashed these items, that Braverman had cashed ten of them on his first visit, eleven money orders on his second visit and eighteen money orders on his last.

The facts were much stronger in the Braverman case than are presented in the instant case.

In the instant case, there is no proof of any possession on the part of the appellant, other than as previously alluded to.

B. RECEIPT, IN
EVIDENCE OF OTHER
MONEY ORDERS AND
TESTIMONY CONCERN-
ING MAIL THEFT WERE
PREJUDICIAL ERRORS

The government introduced Exhibits "14" - "18", "21" - "23", consisting of other money orders in the series that were stolen from Galina's Grocery Store, as proof of prior or other crimes, as they "were" involved in the same action." (P. 174, F. 5, et. seq).

Also, the evidence of Mr. Harris taking checks and other items from mail boxes was also considered proof of Mr. Harris' "intent at the time." (P. 174, F. 19, et. seq).

It is appellant's contention that these items ought to have been excluded from evidence and that the ruling of the court in allowing them into evidence was erroneous.

It is submitted that the United States Attorney's Office completely misread the law with respect to these items, and that the introduction of them as

evidence was highly prejudicial to defendant.

There is no proof, whatsoever, linking Exhibits "14" - "18", "21", and "22" with Mr. Harris. There is no eye witness testimony indicating that Mr. Harris forged, altered, or received these exhibits in a forged or altered condition and knowingly placed them into interstate commerce. There is no testimony of any plan, scheme, or design to place these money orders into interstate commerce. There are no fingerprints or any other physical indicia linking Mr. Harris to these items. Introduction of these exhibits as evidence was inappropriate.

There is no evidence showing who negotiated these exhibits into interstate commerce. To that extent, there is similarity between that situation and the fact that there was no proof as to who

negotiated Exhibits "1" through "5" into interstate commerce. However, none of this can be shown to be similar acts on the part of Mr. Harris as there is no proof that Mr. Harris committed any of them.

With respect to the introduction of Mrs. Smith's testimony with respect to stealing from the mail, Mr. Harris respectfully submits that Mrs. Smith's testimony does not show that Exhibit "26" was stolen by defendant from Mr. Gray's mailbox. Further, as there was no testimony, with respect to counts two through five, showing a similar act on the part of Mr. Harris, it cannot be said that there is a similarity of scheme, plan or design.

With respect to Exhibit "23", Mrs. Smith testified (P. 23, F. 13) that on February 9, 1971, she negotiated that

instrument at Sears Roebuck and Company. Further, she testified that the instrument was made out to her and that she endorsed it and received money for it.

It is significant to note that this was negotiated two days prior to the date the money orders were stolen and reported lost. Mrs. Smith negotiated an instrument prior to the day that it was reported stolen.

Further, Exhibit "23" is the only one of the money orders that contains Jacqueline Simpson Smith's name. Each and every one of the others are made out to other payees. It is undisputed that Mr. Harris did not forge, alter, or falsely make Exhibit "23" in any way. It is undisputed that there was no testimony showing a plan, scheme, or design on the part of Mr. Harris to place this instrument into interstate commerce. Mrs. Smith's statement that Mr.

Harris received part of the proceeds from the negotiation of Exhibit "23" is, at best, equivocal and does not show a design on the part of Mr. Harris to place this instrument into interstate commerce.

Thus, it is respectfully submitted that the negotiation of Exhibit "23" is not a prior or similar act on the part of the defendant, as it is not similar to any other thing which the government had proven that Mr. Harris had done.

The doctrine of "similar and prior acts" is merely the use of several previous transactions to show that the acts charged in the indictment are capable of being performed and, in fact, have been performed by defendant.

Thus, in U.S. -vs- Brettholz, 435 F. 2d 483 (1973), this Court sustained a lower court's admission, into evidence, of ten prior sales of cocaine by defendant

to another person, as evidence that Brettholz was a drug seller and not merely buying drugs for his own use.

Significantly, the Circuit Court commented that, irrespective of the proof of prior sales, there was ample proof to show that with respect to the indictment that Brettholz had illegally sold drugs.

This court concluded that prior similar acts would normally be admissible to prove knowledge, intent or design on the part of a defendant, but insisted that a trial court would have to look closely at the evidence, in order to make sure that an injustice was not done.

Thus, in U.S. -vs- Berlin, 472 F. 2d 1004 (1973), this Court approved a decision of a trial court to permit evidence of proof of two similar transactions as bearing on the intent of Mr. Berlin to

perform the third, for which he was then on trial.

In analyzing this case, it appeared that there was more than sufficient evidence to prove that Berlin had committed the transaction complained of. However, more significantly, there was an ample detailed accounting as to what acts Mr. Berlin performed, which made up the prior and similar acts.

In U.S. -vs- Deaton, 381 F. 2d 114 (1967), the government proved the crime complained of and proved other transactions, which were similar in nature.

In each of these above cases, the initial criminal acts were proven by linking defendant to the scene of the crime, or to the criminal activities, or to the instruments of the crime itself. Once this was done, then, and only then, were other transactions used to show a pattern

of similar acts.

In the instant case, there was no proof of any modus with respect to the charges underlying counts one - five. There was a bit of circumstantial evidence, but there is no proof linking Mr. Harris to the crime other than by his fingerprints. There was no confession and no other thing available to the United States government, to prove Mr. Harris' complicity in these acts complained of.

Therefore, there could be no proof of any prior or similar act on the part of the defendant, and the introduction of this evidence was completely outside of the scope authorized by the cases previously cited.

Further, there was no proof that Mr. Gray's statement from Sears Roebuck and Company, Exhibit "26", was, in fact, stolen from him. There is no testimony that Mr. Harris ever was in possession of this item,

exclusive of his fingerprint which appears upon the instrument. Introduction of this evidence was not probative, as there was no testimony from Mrs. Smith as to where Exhibit "26" came from.

C. JACQUELINE S.
SMITH'S TESTIMONY
WAS UNBELIEVABLE AS
A MATTER OF LAW.

Although the question of a witness' credibility is always one for a jury, your appellant submits that the cumulative weight of her testimony was so incredible, that as a matter of law it ought not be have been sufficient to serve as the basis for convicting defendant.

Aside from the fact that Mrs. Smith was granted immunity from prosecution, for her testimony, and aside from the fact that her

testimony reflected a poor memory (P. 38, F. 41), the vast bulk of her testimony was at conflict with other sworn testimony or unbelievable.

Mrs. Smith testified as a government witness before the grand jury. Presumably, the United States Attorney would have looked at the evidence and discussed her testimony with her prior to her appearance. It would appear that the testimony with respect to Mr. Harris' implication in negotiating Exhibit "23" would have been known to the United States Attorney at that time and long before the day of trial.

If this testimony was available, it would seem that it could serve as the basis for a sixth count of the indictment, or perhaps a single count, leaving the other counts out.

Since the testimony with respect to Exhibits "1" through "5" is so sparse, it

would appear that the government would have welcomed this evidence, as it would make a much stronger case to present to a grand jury and protect the indictment from a dismissal motion. Since Mrs. Smith was testifying before the grand jury anyway, it would not seem necessary to save part of her testimony for trial.

Significantly, at trial, Mrs. Smith testified on direct examination that she had been importuned by Mr. Harris to cash Exhibit "23" in exchange for money (P. 42, F. 13).

However, upon cross examination, Mrs. Smith was impeached by her grand jury testimony. Then she testified that Mr. Harris had importuned her, but that she had resisted his efforts and had not cashed any money orders (P. 56, F. 15, et. seq).

After reviewing her grand jury testimony, Mrs. Smith admitted that she had never

told the grand jury about cashing Exhibit "23", or for that matter any other money order at Sears Roebuck, (P. 61, F. 9, et. seq).

Further, Mrs. Smith admitted that she told an F.B.I. investigator that she did not cash any money orders in Rochester, in 1971, (P. 62, F. 21).

By way of rehabilitation, Mrs. Smith testified when she appeared before the grand jury, on March 23, 1973, that she was not shown Exhibit "23" (cashed in 1971) and was asked no questions with respect to it, (P. 66, F. 2, et. seq).

However, appellant submits that the government had Exhibit "23" available to it at that time, and the failure to use it to obtain the indictment is, presumably, indicative of the fact that Mrs. Smith had told a much different story to the United States Attorney prior to going before the grand jury.

D. INTRODUCTION INTO
EVIDENCE OF PHOTOCOPIES
OF THIRTY FIVE MONEY
ORDERS WAS ERROR

Exhibit "31" consisted of the photocopies of thirty five money orders, which had been received by the Travellers Express Company after being dishonored by the Security National Bank.

They were introduced to show that the instruments had been negotiated through interstate commerce and received by the Travellers office in Minneapolis, Minnesota.

Defendant sought to exclude any copy of any money order, other than those matching Exhibits "1" - "5" and "23" on the basis that this would permit receipt of exhibits which had been prohibited by the court earlier (P. 110, et. seq), and give the jury the impression that Mr. Harris was linked to the forgery of other instruments. Receipt

of this exhibit, in toto, denied Mr. Harris
a fair trial.

POINT IV

THE CONVICTION OF THE LOWER
COURT SHOULD BE REVERSED AND
THE INDICTMENT LODGED AGAINST
DEFENDANT DISMISSED.

Respectfully submitted,

ALFRED P. KREMER
Attorney for Appellant

Superseded by Information No. CR-74-323 as to Samuel L. Harris

HAROLD P. BURKE

CRIMINAL DOCKET

UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

CR-1973-192

TITLE OF CASE				ATTORNEYS			
THE UNITED STATES vs. JACKIE L. HARRIS (Cts. 1 thru 5); SAMUEL L. HARRIS (Ct. 6)				For U.S.: Gerald Houlihan, Esq. AUSA, U.S. Courthouse 100 State St. Rochester, N.Y. 14614 (716) 8-263-6760			
Knowingly transporting a falsely made and forged security, in interstate commerce, in violation of Section 2314, Title 18, U.S.C.				For Defendant: (assigned) (1) Anthony G. DiAmante, Esq. / (2) Herbert Stern, Esq. (1) Alfred P. Kremer, Esq. (assigned)			
Offenses: 2/1971, 3/1971, 5/1971 6 Cts.				On Appeal : (1) Alfred P. Kremer, Esq. (assigned)			
STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.	200 Times Square Building Rochester, N.Y. 14614 (716) 546-6040	
J.S. 2 mailed	Clerk						
J.S. 3 mailed	Marshal						
Violation	Docket fee						
Title 18							
Sec. 2314							

DATE	PROCEEDINGS
May 4	Filed Indictment
May 4	J.S. 2 made
May 11	Filed Pet. & Order for Writ of H.C. Ad Testificandum- BURKE, J., ret. 5/14/1973
May 14	Deft. Samuel L. Harris, present with counsel, waives reading of the Indictment and enters a plea of not guilty. Motions ret. 5/29/1973
May 14	Deft. Jackie L. Harris appears for arraignment with-out counsel. Adj. 5/29/1973. Deft. is released on \$1,000 personal recog. bond.
May 14	Filed \$1,000 recog. bond for Deft. Jackie L. Harris
May 17	Filed Writ of H.C. Ad Testificandum, for Deft. Samuel L. Harris, executed - 5/14/1973
May 22	Filed Ct. stenographer's minutes of 5/14/1973
May 29	Arraignment. Deft. Jackie Harris present without counsel. Adj. until 6/11/1973 for Deft. to obtain counsel.
June 11	Arraignment. Deft. Jackie Harris present without counsel, requests the Court to appoint counsel. Deft. is sworn and answers questions regarding financial status. The Court will assign a lawyer. Arraig. adj. to 6-25-73.

DATE 1973	PROCEEDINGS
June 27	Filed Cy. 5 of CJA-20 - Order appointing XXXXXXXXXXXX Anthony G. D'Amada, Esq., as counsel for the Deft. Jackie Harris--BURKE, J. Cy. to the Adm. office, Orig. ret. to counsel for submission of voucher.
July 12	Filed Cy. 5 of CJA 20: Order appointing Alfred P. Kremer counsel for Deft., Jackie Harris, Burke, J.; cy. to Adm. Office, orig. ret. to counsel for submission of voucher (replaces Anthony G. D'Amada, previous counsel, who withdrew)
July 13 July 9	Filed (\$1,000.00) Recog. Bond, for Samuel Harris Arraignment. Deft. Jackie Harris present with counsel, waives reading of the Indictment and enters a plea of not guilty. Motions ret. 7/23/1973.
Aug. 17	Filed Deft., Jackie L. Harris, affidavit, notice of motion to dismiss and omnibus discovery motion-ret. 9/24/73 - Roch.
Sept. 10 Sept. 24	Filed Ct. Stenographer's minutes of XXXXXXXXXX 7/9/1973 Motion by Deft. to dismiss and omnibus discovery. To be submitted 9/28/1973. re- Jackie L. Harris
Oct. 9	Filed Govt's response to Deft's motions (Jackie Harris) <i>(sent to Roch.)</i>
Oct. 12	Filed Govt's notice of motion and motion with proof of service, to set a date for trial for criminal trial calendar, ret. 10/23/1973--Roch. re Jackie Harris <i>(sent to Roch.)</i>
Oct. 12	Filed Govt's notice of motion and motion with proof of service to set a date for trial for criminal trial calendar, ret. 10/23/1973--Roch. <i>(sent to Roch.)</i>
Oct. 17	Filed Deft. Samuel Harris's notice of motion to dismiss & omnibus discovery motion - ret. 10/23/1973--Roch. (filed in Roch.)
Oct. 23	Motion by Deft. Samuel Harris to dismiss and Omnibus discovery motion. Motion to dismiss denied. Discovery motion adj. until 11/12/1973. Motion by Govt. to set date for trial. The Govt. is ready. The Court will set date for trial.
Oct. 23	Deft. Jackie Harris's motion for discovery submitted now. Motion by Govt. to set date for trial. The Govt. is ready. The Court will set date for trial.
Oct. 23	Filed Defendant's answering affidavit
Oct. 26	Filed Govt's response to Deft's motions (sent to Roch.)
Nov. 12	Motion by Samuel Harris for discovery, etc. The Govt. has submitted its response.
1974	
Apr. 8	Filed Order - that on or before 4/26/1974 the U.S. Atty., shall furnish to the attys. for the defts. copies of any statements of witnesses, exhibits and evidence in the possession of the Govt., which would exculpate, tend to exculpate, or in any way provide mitigating factors in connection with the said defts. Jackie L. Harris and Samuel L. Harris, alleged commission of the offenses charged in the indictment; in all other respects motions of the Defts. Jackie L. Harris and Samuel L. Harris, for material beyond that furnished by the Govt. in its response to the defts. motions, are in all respects denied.--BURKE, J. <i>(Order sent to Roch.)</i>
May 7	Filed Govt's notice of motion, motion, to set a date for trial for the criminal trial calendar, ret. 5/13/1974-Roch.
May 13	Motion by Govt. to set date for trial. The Govt. is ready. Trial date to be fixed for deft. Samuel Harris.
Oct. 9	Filed Govt's notice of motion and motion to set a date for trial for criminal trial calendar, ret. 10/15/74-Roch., w/affidavit of service

DATE 1974	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Oct. 9	Filed Govt's notice of motion and motion for Deft. Jackie Harris, to set a date for trial for the criminal trial calendar, ret. 10/15/74-Roch., w/affidavit of service		
Oct. 15	Motion by Govt. to set date for trial. The Govt and the defts are ready for trial. Trial to follow Channave.		
Dec. 26	Filed Writ of Habeas Corpus Ad Prosequendum for Deft. Samuel Harris- executed 12/23/74		
1975			
Jan. 20	Govt. moves case to trial - before Judge Burke, at Rochester, N.Y, and the jury is duly empaneled - Trial is adj. until tomorrow. ---		
Jan. 21	Trial continues from yesterday with the same appearances -- The Govt. rests. The jury is excused; Deft. moves to dismiss the Indictment or in the Alternative, Count Four. Trial is adj. until tomorrow at 10:00 a.m.		
Jan. 22	Trial continues from yesterday with the same appearances - the motions of the defendant are denied in all respects. Evidence is closed. The defendant moves for a verdict of acquittal and renews all motions made yesterday. The motions are in all respects - denied. The jury returns with the following verdict: Count 1 - Guilty; No verdict on Counts 2,3,4,5. The Jury is polled at the request of the defendant. Sentence is deferred until Feb. 10, 1975 at 10:00 a.m.		
Jan. 22	Filed two subpoenas - Laverne A. Gray, Joseph M. Gallina, served 1/20/1975		
Jan 24	Filed nine subpoenas--Jacqueline Kay Simpson, served 1/17/75, Vincent W. Neubecker, D.W. Hockridge, Mary LaRocca, Elizabeth Cona, Bruce Coleman, Sharon Marlowe, Vicki Evans, served 1/20/75; Gene Lewis; served 1/21/75		
Feb. 10	Deft. Jackie L. Harris appears for sentence, whereupon the Court sentences the deft. on Count One as follows: The Court: I impose a sentence of eighteen (18) months. BURKE, J. Deft. requests that he be permitted to remain on bail pending appeal. Motion for bail is granted.		
Feb. 10	J.S. 3 made		
Feb. 10	Filed Deft's notice of Appeal		
Feb. 12	Cy. of Deft. Jackie Harris's notice of appeal mailed to the Deft. U.S. Atty., and the CCA with Criminal Case Information (Form A); Financial Affidavit (Form CJA-23), Docket Entries		
Feb. 14	Filed Judgment and Commitment for Jackie L. Harris. Commitment issued to the Marshal.		
Feb. 21	Filed Copy of Scheduling Order from the CCA- that the record be docketed on or before March 5, 1975, etc..		
Feb 21	Filed cy. 5 of CJA 21--authorization for transcript. Cy 4 to Adm. Office		

IN THE DISTRICT COURT OF THE UNITED STATES
For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

JACKIE L. HARRIS
SAMUEL L. HARRIS

OCTOBER 1972 SESSION

No. CR 1973-192

Vio. Title 18, U.S.C.,
§2314

COUNT I

The Grand Jury Charges:

On or about February 2, 1971, JACKIE
L. HARRIS, with unlawful and fraudulent
intent, did transport and cause to be trans-

ported in interstate commerce from Rochester, New York, in the Western District of New York, to Faribault, Minnesota, a falsely made and forged security, that is, a money order, knowing the same to be falsely made and forged, and being of the tenor and description as follows, to wit: a Travellers Express Company, Inc., Money Order, Number 076-5596-240, dated 2/2/71, in the amount of \$150.00, payable to Sears Roebuck Company, signed Levene Gray, and drawn on the Security National Bank, Faribault, Minnesota; all in violation of Title 18, United States Code, Section 2314.

COUNT II

The Grand Jury further charges:

On or about February 11, 1971, JACKIE L. HARRIS, with unlawful and fraudulent intent, did transport and cause to be trans-

ported in interstate commerce from Rochester, New York, in the Western District of New York, to Faribault, Minnesota, a falsely made and forged security, that is, a money order, knowing the same to be falsely made and forged, and being of the tenor and description as follows, to wit: a Travellers Express Company, Inc., money Order number 076-5596-242, dated 2/11/71, in the amount of \$150.00, payable to Richard Johnson, signed James King and drawn upon the Security National Bank, Faribault, Minnesota; all in violation of Title 18, United States Code, Section 2314.

COUNT III

The Grand Jury further charges:

On or about February 11, 1971, JACKIE L. HARRIS, with unlawful and fraudulent intent, did transport and cause to be trans-

ported in interstate commerce from Rochester, New York, in the Western District of New York, to Faribault, Minnesota, a falsely made and forged security, that is, a money order, knowing the same to be falsely made and forged, and being of the tenor and description as follows, to wit: a Travellers Express Company, Inc., Money Order number 076-5596-244, dated 2/11/71, in the amount of \$75.00, payable to Richard Johnson, signed John Wildmar and drawn upon the Security National Bank, Faribault, Minnesota; all in violation of Title 18, United States Code, Section 2314.

COUNT IV

The Grand Jury further charges:

On or about February 11, 1971, JACKIE L. HARRIS, with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce from Rochester,

New York, in the Western District of New York, to Faribault, Minnesota, a falsely made and forged security, that is, a money order, knowing the same to be falsely made and forged, and being of the tenor and description as follows, to wit: a Travellers Express Company, Inc., Money Order, number 076-5596-240, dated 2/11/71, in the amount of \$150.00, payable to Richard Johnson, signed Bet Henderson and drawn upon the Security National Bank, Faribault, Minnesota; all in violation of Title 18, United States Code, Section 2314.

COUNT V

The Grand Jury further charges:

On or about March 5, 1971, JACKIE L. HARRIS, with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce from Rochester, New York, in the Western District of New York,

to Faribault, Minnesota, a falsely made and forged security, that is, a money order, knowing the same to be falsely made and forged, and being of the tenor and description as follows, to wit: a Travellers Express Company, Inc., Money Order, number 076-5596-250, dated 3/5/71, in the amount of \$100.00, payable to Ernestine White, signed James Williams and drawn upon the Security National Bank, Faribault, Minnesota; all in violation of Title 18, United States Code, Section 2314.

COUNT VI

The Grand Jury further charges:

On or about May 29, 1971, SAMUEL LEE HARRIS, with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce from Rochester, New York, in the Western District of New York, to Faribault, Minnesota, a falsely made and

forged security, that is, a money order, knowing the same to be falsely made and forged, and being of the tenor and description as follows, to wit: a Travellers Express Company, Inc., Money Order, number 076-5596-260, dated 5/29/71, in the amount of \$00, payable to Jr. Brown, signed Mary Lewis and drawn upon the Security National Bank, Faribault, Minnesota; all in violation of Title 18, United States Code, Section 2314.

JOHN T. ELFVIN
United States Attorney

A TRUE BILL:

Foreman

A(11)

1 Wednesday, January 22, 1975

2 2:00 P.M.

3 AFTERNOON SESSION

4
5 -- -- --
6 (Jury present.)

7
8
9 CHARGE OF THE COURT

10 THE COURT: Members of the Jury, the
11 Indictment in this case was filed May 4, 1973.
12 It contains six separate Counts or charges. The
13 first five of those charges are against Jackie L.
14 Harris alone. The Sixth Charge or Count of the
15 Indictment is against Samuel L. Harris. He has
16 pleaded guilty and was sentenced by this Court.
17 That is the reason he is not before you on trial
18 here.

19 All five charges against Jackie L. Harris
20 contain fundamentally the same kind of charge.
21 The only difference in the Counts is the date of
22 the alleged transportation in interstate commerce
23 between Rochester, New York and Faribault, Minnesota,
24 the identification of the particular money order
25 which is the subject of the charge, the amount of

1 the money order and to whom the money order was
2 payable.

3 All five of the money orders were
4 Travelers Express Company money orders, each
5 bearing a date and an amount and all five of the
6 money orders were drawn on the Security National
7 Bank, Faribault, Minnesota. That means that each
8 money order was an authorization by Travelers
9 Express Company, to pay a certain amount to the
10 payee when the money order was presented for pay-
11 ment at its bank, the Security National Bank,
12 Faribault, Minnesota.

13 The Federal statute involved in this case
14 provides that whoever with unlawful or fraudulent
15 intent transports in interstate commerce any falsely
16 made, forged, altered, or counterfeited security,
17 knowing the same to have been falsely made, forged,
18 altered, or counterfeited, is subject to the
19 punishment provided by the statute.

20 The First Count charges that on or about
21 February 2, 1971, Jackie L. Harris, with fraudulent
22 intent did transport and cause to be transported
23 in interstate commerce from Rochester, New York to
24 Faribault, Minnesota, a falsely made and forged
25 security, a money order, knowing the same to be

1 falsely made and forged, and described in Count 1
2 as a Travelers Express Company money order dated
3 February 2, 1971, in the amount of \$150 payable to
4 Sears, Roebuck and Company, signed LaVerne E. Gray,
5 and drawn on the Security National Bank, Faribault,
6 Minnesota.

7 The Second Count charges that on or about
8 February 11, 1971, Jackie L. Harris with fraudulent
9 intent did transport and cause to be transported
10 in interstate commerce from Rochester, New York to
11 Faribault, Minnesota, a falsely made and forged
12 security, a money order, knowing the same to have
13 been falsely made and forged, and described in Count
14 2 as a Travelers Express money order dated February
15 11, 1971, in the amount of \$150 payable to Richard
16 Johnson, signed James King, and drawn on the
17 Security National Bank, Faribault, Minnesota.

18 You need not keep track now of the
19 particular dates and descriptions and identifications
20 of the money orders. I am going to let you take
21 with you into the jury room the original Indictment
22 so that you will have before you in writing in your
23 deliberations in the jury room, the exact details
24 of each of the five charges against this defendant.

25 The Third Count charges that on or about

1 February 11, 1971, Jackie L. Harris with fraudulent
2 intent did transport and cause to be transported in
3 interstate commerce from Rochester, New York to
4 Faribault, Minnesota, a forged security, that is,
5 a money order, knowing the same to be falsely made
6 and forged and being described in Count 3 as a
7 Travelers Express Company money order, dated
8 February 11, 1971, in the amount of \$75, payable
9 to Richard Johnson, signed John Wildmar, and drawn
10 upon the Security National Bank, Faribault,
11 Minnesota.

12 Count 4 charges that on or about February
13 11, 1971, Jackie L. Harris, with fraudulent intent
14 did transport and caused to be transported in inter-
15 state commerce from Rochester, New York to Faribault,
16 Minnesota, a falsely made and forged security, a
17 money order, knowing the same to be falsely made and
18 forged and described in Count 4 as a Travelers
19 Express Company money order, dated February 11, 1971,
20 in the amount of \$150, payable to Richard Johnson
21 and signed by Beth Henderson and drawn upon the
22 Security National Bank, Faribault, Minnesota.

23 Count 5 charges that on or about May 5,
24 1971 Jackie L. Harris with fraudulent intent did
25 transport and caused to be transported in interstate

1 commerce, from Rochester, New York to Faribault,
2 Minnesota, a forged security, a money order, know-
3 ing the same to be falsely made and forged and
4 being described in Count 5 as a Travelers Express
5 Company money order, dated March 5, 1971, in the
6 amount of \$100 payable to Ernestine White, signed
7 James Williams, and drawn upon the Security National
8 Bank, Faribault, Minnesota.

9 Under the statute making it a crime to
10 transport a forged security interstate, to consti-
11 tute a violation, a person could have been the
12 initiating person starting the interstate movement
13 of the altered security, and he could be found
14 guilty if he had the necessary criminal intent and
15 knowledge that the security was false or forged,
16 or altered, even though the person remained in one
17 state at the time of the transportation of the
18 forged security in interstate commerce.

19 Whoever wilfully and with criminal intent
20 procures or causes an act to be done by another,
21 which if directly performed by him would be a crime,
22 is responsible as a principal. A person may perform
23 or accomplish a criminal act or acts by himself or
24 by another. If the evidence has established beyond
25 a reasonable doubt that this defendant, Jackie L. Harris

1 with criminal intent aided some other person in
2 transporting or causing to be transported a forged
3 money order, in interstate commerce with knowledge
4 that the security was forged, he would be responsi-
5 ble as a principal, the same as if he, himself, had
6 transported or caused the forged instrument to be
7 transported in interstate commerce from Rochester,
8 New York to Minnesota.

9 A money order such as these Travelers
10 Express money orders was a security within the
11 meaning of that term as used in the Federal statute.

12 It is ordinarily reasonable to infer that
13 a person intends the natural and probable conse-
14 quences of acts knowingly done or knowingly omitted.

15 The person who first uses a money order
16 for the purpose of cashing it, receiving the cash
17 right away, or endorsing the money order for the
18 purpose of applying the face amount of the money
19 order or part of the face of the money order to
20 apply upon a bill owing is the person who initiates
21 or starts the interstate movement of the money
22 order, in this case the initiation of the movement
23 at Rochester, New York and the termination of the
24 interstate movement in Minnesota where the money
25 order had to be presented for payment.

1 If, as to any one of these Counts, the
2 evidence has established beyond a reasonable doubt
3 that Jackie Harris, this defendant, himself, or
4 through some other person of his choosing, initiated
5 the interstate movement of the money order, knowing
6 that the money order was forged and bore a false
7 and fictitious endorsement and writing and he did
8 so with the criminal intention of defrauding the
9 person or company to whom it was to be presented,
10 under those circumstances he could be found guilty.

11 To warrant a conviction on each of these
12 five Counts of the Indictment, the Government must
13 establish beyond a reasonable doubt: (1) That the
14 particular money order which is the subject of the
25 15 particular Charge, identified by amount, date and
16 to whom the money order was payable, must have been
17 forged, that is, it must have contained a false and
18 fictitious writing as to the symbol, the agency
19 name, and the fictitious payee, not authorized by
20 the Travelers Express Company. (2) That Jackie L.
21 Harris, this defendant, knew that the particular
22 money order was a falsely made and forged money
23 order, that is, that it contained a false and
24 fictitious and unauthorized writing. (3) That
25 Jackie L. Harris transported or caused to be

1 transported in interstate commerce from Rochester,
2 New York to the bank at Faribault, Minnesota, the
3 particular money order which is the subject of the
4 charge, with the evil and criminal intention of
5 defrauding the person or company to whom it was
6 to be presented for cashing or for credit on some
7 account, in part, and for receiving the balance in
8 cash.

9 Gallina testified that sometime in the
10 early part of February, 1971, there was a theft
11 from his grocery store at 783 Plymouth Avenue
12 South, of seventy-eight blank money orders of
13 Travelers Express Company which he was authorized
14 to sell and issue as an agent for Travelers Express
15 Company. He reported this theft of the money orders
16 to Travelers Express Company on February 11, 1971.
17 At the same time he reported that the theft of the
18 money orders from his grocery store was February 2,
19 1971.

20 The stolen money orders did not constitute
21 obligations of Travelers Express Company. They
22 were blanks. To make them obligations of the
23 Travelers Express Company, each required the name
24 of a payee, an agent symbol and an amount. These
25 insertions to make the money orders obligations of

1 Travelers Express Company had to be authorized by
2 Travelers Express Company. The completion of the
3 blank money orders by these necessary insertions
4 by someone not authorized by Travelers Express
5 Company to make such insertions, would be a false
6 representation and a false execution and alteration
7 of the money order. If this defendant knew that
8 these insertions had been made by someone not
9 authorized by Travelers Express Company to make
10 them, that would constitute knowledge on his part
11 that the money orders had been falsely made and
12 altered within the meaning of the statute.

13 Elizabeth Cona testified that she was a
14 cashier at the Sears Roebuck store on Monroe Avenue
15 in Rochester and regularly received payments on
16 account. She said that she received on February 12,
17 1971, Exhibit G-1, which was a money order in the
18 amount of \$150 payable to Sears, Roebuck and Company
19 dated February 2, 1971, signed LaVerne Gray, and
20 that she received this in payment on the LaVerne
21 Gray account in part. She applied, as requested
22 by the presenter of the money order, \$48.20 to
23 the Gray account, and gave the balance of around
24 \$100 to the person who presented the money order.

25 Jacqueline Smith testified that she is now

1 on probation from a conviction about two years ago
2 in the Monroe County Court. She testified here
3 under a promise of immunity from prosecution in
4 return for her testimony. She identified the
5 defendant and said that she got Travelers Express
6 Company money orders from the defendant early in
7 1971, and that the defendant told her that he had
8 stolen the money orders from a grocery store on
9 Plymouth Avenue. She said one of the money orders
10 that she got from him she cashed at the Sears store.
11 This was Exhibit 23, dated February 9, 1971. She
12 said she endorsed the money order and cashed it on
13 February 10, 1971 at the Sears store and received
14 \$100 in cash and she retained \$50 and that she gave
15 \$50 to the defendant.

16 LaVerne Gray testified that he had an
17 account at the Sears store in February of 1971.
18 He denied making any payment on his account in the
19 approximate amount of \$101, or \$48, which was
20 credited to his account, which was the amount of
21 the change given to the Sears Roebuck cashier on
22 February 12, 1971 when the money order for \$150
23 was presented and \$48.20 was applied toward the
24 payment of the Gray account.

25 Mary LaRocca was the head cashier at

1 Sears. She testified that Exhibit 1, Exhibit 14,
2 Exhibit 17 and Exhibit 23, are all money orders
3 received at the Sears store in February, 1971 and
4 that all were turned over the FBI in May of 1971.

5 Sharon Marlowe was a clerk at the J. C.
6 Penney Company in May, 1971. She said that Exhibit
7 5 was a Travelers Express Company money order for
8 \$100 and that she gave cash to a woman who presented
9 the money order for payment and accepted a medical
10 identification card as identity.

11 H. W. Hockridge was the Manager of the
12 Penney store at Ridgemont Plaza. He testified
13 that he deposited the money order, Exhibit 5, in
14 the Penney account and that it came back to him
15 unpaid, with the notation that it was a stolen
16 money order and he turned it over to a collection
17 agency on April 5, 1971. A representative of the
18 collection agency said that he turned this money
19 order, Exhibit 5, over to the FBI on May 7, 1971.

20 Fitzpatrick, the Manager of Tops Market
21 on Hinchey Road, testified to the money order;
22 Exhibit 2, for \$150, Exhibit 3 for \$75; Exhibit 15
23 for \$100; Exhibit 21 for \$100; Exhibit 22 for
24 \$100; and Exhibit 4 for \$150; all of which were
25 Travelers Express Company money orders and were

1 cashed at the market in February, 1971 and all were
2 turned over to the FBI about three months later.

3 Eugene Lewis, the Travelers Express
4 Company from the office at Minneapolis, Minnesota,
5 testified that the report of the theft of money
6 orders was received by the Travelers Express Company
7 on February 11, 1971 and that it was then reported
8 that the loss had taken place on February 2, 1971,
9 and that twenty-eight of the money orders reported
10 as stolen were presented to the Security National
11 Bank at Faribault, Minnesota, and payment on those
12 twenty-eight money orders was refused by the bank
13 upon the ground that the money orders were stolen.

14 Saunders was the representative of the
26 FBI stationed at Washington whose job it was to
15 analyze, compare and report on questioned documents,
16 and that he examined, analyzed and compared finger-
17 prints which he found upon examination on money
18 orders, Exhibits 1, 2, 3, 4, and 5, and also the
19 payment stub of the Sears bill, Exhibit G-26. He
20 compared the fingerprints on each of these named
21 exhibits with the known fingerprints of the defend-
22 ant in this case. He testified that the latent
23 fingerprints on each of those exhibits were finger-
24 prints of the identical person whose fingerprints
25

1 occurred on the known fingerprint exhibit containing
2 the defendant's fingerprints.

3 I have not attempted to discuss all the
4 evidence in the case here, either the oral testimony
5 or the documentary evidence. That does not mean
6 that because I have not discussed some of the
7 evidence that I do not consider that evidence
8 important. It would be too long a task for me to
9 undertake a discussion of all the evidence. In
10 your deliberations in the jury room you should
11 consider all the evidence in the case and reach
12 your own conclusion after consideration of all the
13 evidence, whether I have discussed it or not. My
14 recital of the evidence is based only on my rough
15 notes made during the course of the trial and upon
16 my recollection of the testimony. You are not at
17 all bound by my recital of the evidence. If your
18 recollection of the evidence differs from mine,
19 have no hesitancy in disregarding my version of the
20 evidence and rely upon your own recollection and
21 upon your own version.

22 Jacqueline Smith by her own testimony
23 was an accomplice of the defendant in this case.
24 An accomplice is a person associated with another
25 in criminal acts. An accomplice is not prevented

1 by law from testifying against an associate in
2 criminal acts. But, because it is accomplice
3 testimony, it should be received with the utmost
4 caution and subjected to the utmost scrutiny by
5 the jury in determining the guilt or innocence of
6 this defendant. She testified in this case under
7 a promise of immunity from prosecution for her
8 criminal acts in return for her testimony. This
9 fact should also be considered by the jury in
10 evaluating her testimony.

11 Exhibits 1 through 5 are the five exhibits
12 or money orders which are the basis of the five
13 charges in the Indictment. Other exhibits of money
14 orders have been received in evidence. These other
15 exhibits were received in evidence for consideration
16 by the jury as bearing on the question of the
17 defendant's intent or guilty knowledge of the crime
18 charged in the Indictment, and for no other purpose.

19 The Indictment in this case is no
20 evidence whatsoever of guilt. No weight whatsoever
21 is to be drawn from the fact that an Indictment
22 has been returned. That is the method under our
23 system of law by which a defendant is exactly
24 apprised of the charge or charges against him so
25 that he may formulate his defense. In every

1 criminal case, and in this case the defendant is
2 presumed to be innocent, and that presumption of
3 innocence remains with the defendant throughout
4 the entire case. It can only be overcome by evidence
5 which establishes guilt beyond a reasonable doubt.
6 The Government has the burden of establishing the
7 guilt of the defendant beyond a reasonable doubt.
8 That burden rests on the Government up to the very
9 end of the case. The burden of going forward with
10 the evidence never shifts to a defendant. There
11 never comes a time in the trial of the case where
12 the burden is upon a defendant to establish his
13 innocence. If the Government has not established
14 the guilt of the defendant beyond a reasonable
15 doubt, that is the end of the case.

16 A "reasonable doubt" means a doubt that
17 has its basis in reason or logic as distinguished
18 from a doubt that is based upon some emotion or
19 feeling such as a hunch, a whim, a fancy, caprice
20 or something of that sort. To establish guilt
21 beyond a reasonable doubt means to establish guilt
22 to a moral certainty. The state of the evidence
23 must be such as to exclude every reasonable
24 explanation except that of guilt.

25 You, as jurors, are the sole judges of

1 the facts in the case. Wherever there is a disputed
2 question of fact, you, as jurors, and you, alone,
3 must resolve that dispute. The duty of the Court
4 is to explain to you what the law applicable to the
5 case is so that you may apply that law to the facts
6 as you find them. The Court may not determine what
7 the evidence in the case has established, nor may
8 the jury determine what the law of the case is.
9 The duty of the Court and the duty of the jury are
10 distinct and separate.

11 If you believe that any witness has an
12 interest in the outcome of this case you should
13 consider that interest in evaluating the testimony
14 of that witness. That is particularly applicable
15 in this case to the defendant, who has a direct
16 interest in the outcome of the case.

17 If you believe that the interest of a
18 witness, no matter who the witness may be, has led
19 the witness to color his or her testimony in favor
20 of one side or the other, you should discount the
21 testimony accordingly. If you believe that any
22 witness in the case has testified falsely and has
23 done so intentionally in regard to some material
24 aspect of the case, you may reject the testimony
25 of that witness entirely if you choose to do so.

1 Your verdict is required to be unanimous.

2 Now by that I mean to dispose of any particular
3 Count or charge your finding must be unanimous and
4 each Count is a separate charge and each Count
5 requires a separate verdict. Now conceivably you
6 may be able to agree upon some of the Counts and
7 not agree upon others. If that occurs, please
8 inform the Court accordingly.

9 You may take all the exhibits with you
10 into the jury room and the original Indictment which
11 I am now handing to the Clerk.

12 I received specific requests to charge
13 from the parties. And I have received specific
14 requests by the defendant to charge as follows, and
15 I shall do so:

16 The witness, John Saunders, gave testimony
17 concerning his qualifications as an expert in the
18 field of fingerprint analysis. When a case involves
19 matters of science or art, or requires special skills
20 or knowledge not ordinarily possessed by those who
21 do not specialize in the field in question, an
22 expert is permitted to state his opinions for the
23 information of Court and jury. You must note that
24 expert testimony is not testimony which proves any
25 facts -- the opinions which the expert states are

1 based either upon his observation and interpretation
2 of what he observes, or upon assumed facts stated
3 to him by the counsel who questioned him.

4 As an expert he is qualified to state his
5 opinions, but not to determine the facts; this, as
6 always, is yours to do. You may reject the expert's
7 opinion if you find the facts upon which he based it
8 different from your understanding of the facts. You
9 may also reject it if, carefully considering all
10 the evidence in the case and not just the facts
11 stated by or to the expert, you disagree with him;
12 in other words, regardless of how highly qualified
13 he may be, you need not accept his opinion if you
14 think it negatived or overborne by other other facts
15 and circumstances which you believe have been proved.

16 The expert's opinion is subject to the
17 same rules of reliability, and may be impeached in
18 the same manner, as the testimony of any other
19 witness. It is presented to assist you in reaching
20 your conclusion. It is entitled to such weight as
21 you find the expert's qualifications in his field
22 entitle it to receive, and it must be considered
23 by you, but it is not controlling upon your judgment.

24 The Government has produced proof that
25 the witness, Jacqueline Simpson, had previously

1 been convicted of a felony. This evidence was
2 admitted solely to aid you in considering her
3 believability, and to determine the weight to
4 be given the testimony of that witness. You must
5 not consider this evidence of the witness' prior
6 conviction for any other purpose, or permit it
7 otherwise to influence you with respect to your
8 verdict or determination.

9 You may consider this fact in deciding
10 what weight you will give this witness' evidence;
11 her explanation of the circumstances of her
12 conviction can not overcome the fact that she was
13 so convicted.

14 You may also consider the nature of the
15 crime of which she was convicted. The fact that
16 a person has been convicted of a crime does not
17 automatically make them unworthy of belief. But
18 if it is a crime which involves capacity to be
19 truthful, such as perjury or fraud, or one which
20 would normally and reasonably make you believe that
21 they are not to be trusted to tell the truth, you
22 may apply that fact, with others, to your deter-
23 mination of whether you will believe her testimony,
24 and to what extent.

25 Once more I repeat: It is your duty to

1 determine whether this witness, like any witness,
2 is to be believed wholly -- or partly -- or not
3 at all. Her prior conviction will not decide this
4 for you, but it will be one of the facts which will
5 help you to decide whether to believe her, and how
6 far.

7 Any necessary fact may be proved by
8 circumstantial evidence. To prove a fact, thereby,
9 there must be positive evidence of some fact which,
10 though true, does not itself answer the question
11 in dispute but affords a reasonable supposition of
12 its existence. The fact or facts upon which this
13 supposition is to be based must be proved by word
14 or object, and must not be left to rest in con-
15 jecture or suspicion.

16 When facts are shown, it must appear
17 that the supposition drawn is the only one that
18 can fairly and reasonably be drawn from them --
19 that any other explanation is, in fairness or
20 reason not to be accepted. If the fact or facts
21 proved permit you to draw either of two inferences
22 -- might just as reasonably support the conclusion
23 that the defendant did as he is charged, as the
24 other that he did not -- then you must draw the
25 one favorable to him for in a criminal prosecution

1 he is entitled to every reasonable doubt.

2 And that would be so because in that
3 case you would have a reasonable doubt.

4 A witness may be discredited or impeached
5 by contradictory evidence; or by evidence that at
6 some time the witness has said or done something,
7 or has failed to say or do something, which is
8 inconsistent with the witness' present testimony;
9 or by evidence that the general reputation of the
10 witness for truth and veracity is bad in the
11 community -- that doesn't refer to this case
12 because there has been no character testimony in
13 this case.

14 If you believe any witness has been
15 impeached and thus discredited, it is your exclu-
16 sive province to give the testimony of that witness
17 such credibility, if any, as you may think it
18 deserves.

19 If a witness is shown knowingly to have
20 testified falsely concerning any material matter,
21 you have a right to distrust such witness' testimony
22 in other particulars; and you may reject all the
23 testimony of that witness, or give it such credi-
24 bility as you may think it deserves.

25 An act or omission is "knowingly" done,

1 if done voluntarily and intentionally, and not
2 because of mistake or accident or another innocent
3 reason.

4 The United States Attorney has submitted
5 some requests and I will charge them.

6 The Government has introduced evidence
7 that the defendant, Jackie L. Harris, has partici-
8 pated in acts of a criminal nature which are not
9 charged in the Indictment. In particular, I am
10 referring to the testimony of Jacqueline Simpson
11 Smith regarding the theft of mail. This testimony
12 may not be considered by you as evidence of the
13 defendant's criminal nature or character. This
14 evidence may be considered by you only for the
15 limited purpose of determining whether the defendant
16 had access to mail addressed to LaVerne Gray.

17 You will recall that Gray testified that
18 he received in the mail monthly bills of his account
19 with Sears Roebuck. You will also recall that the
20 cashier for Sears testified that she received a
21 \$150 Travelers Express money order on February 12,
22 1971, and credited Gray's account with \$48.20 and
23 gave the balance in cash.

24 Intent ordinarily may not be proved
25 directly because there is no way of fathoming

1 or scrutinizing the operations of the human mind.
2 But you may infer the defendant's intent from the
3 surrounding circumstances if the inference is
4 reasonable, and reasonably flows from the proven
5 facts. You may consider any statement or act done
6 or omitted by the defendant, and all other facts
7 and circumstances in evidence which indicate his
8 state of mind. It is ordinarily reasonable to
9 infer that a person intends the natural and
10 probable consequences of acts knowing done or
11 omitted.

12 A money order is "false" if it was untrue
13 when made, and was then known to be untrue by the
14 person making it, or causing it to be made. A
15 money order is "fraudulent" if it was falsely made,
16 or caused to be made, with intent to deceive the
17 person receiving the money order.

18 The completion of a money order with the
19 amount and the agent's symbol number, by a person
20 other than Joseph Gallina, the agent for Travelers
21 Express Company in Rochester, or by Travelers
22 Express Company itself, if done wilfully and with-
23 out authority and with intent to defraud would be
24 a forgery within the meaning of the statute.

25 In a case where two or more persons may

1 have participated in the commission of a crime,
2 the guilt of the defendant may be established
3 without proof that he personally did every act
4 constituting the offense charged, as long as his
5 criminal intent is proved beyond a reasonable
6 doubt.

7 Whoever commits an offense against the
8 United States, or aids, abets, counsels, commands,
9 induces, motivates or procures its commission is
10 punishable as though he did the act himself.

11 Whoever wilfully causes an act to be
12 done, if which directly performed by him or another
13 would be an offense against the United States, is
14 punishable as though he did the act himself.

15 In other words, every person who wilfully
16 participates in the commission of a crime may be
17 found guilty of that offense, providing he had
18 criminal intent and that has been established by a
19 reasonable doubt. "Participation" is wilful if
20 done voluntarily and intentionally, and with the
21 specific intent to do something the law forbids,
22 or with the specific intent to fail to do something
23 the law requires to be done; that is, with bad
24 purpose either to disobey or to disregard the law.

25 In order to aid or abet another to commit

1 a crime, it is necessary that the accused wilfully
2 associate himself in some way with the criminal
3 venture, and wilfully participate in it as he would
4 do in something he wishes to bring about; that is
5 to say, that he wilfully seeks by some act of his
6 to make the criminal venture succeed.

7 The defendant, Jackie L. Harris, has
8 chosen to testify in this case on his own behalf.
9 The fact that he is accused in the Indictment in
10 this case does not make him incompetent as a witness.
11 As such, the defendant's testimony is to be judged
12 the same way as any other witness. However, the
13 jury should keep in mind the defendant's special
14 interest in the case in weighing his testimony.

15 Count 4 of the Indictment charges the
16 defendant with a crime in connection with a
17 specifically described money order. The money
18 order number in that Count is set out as 240, and
19 the proof is that the money order is actually No.
20 246. This is a typographical error and is not a
21 material variance. The money order is specifically
22 described by other factors in the Indictment.
23 And that is not a material variance in the proof.

24 Anything further?

25 MR. HOULIHAN: No request for

1 exceptions, your Honor.

2 MR. KREMER: I have several
3 exceptions which we can take now or at
4 the Court's convenience, your Honor.

5 THE COURT: All right. State
6 them now.

7 MR. KREMER: With respect to the
8 Court's charge, your Honor, I would
9 specifically except to the following items:
10 First, that the Court has charged that if
11 Mr. Harris aided and abetted another
12 person and had the criminal intent to do
13 so that he would be liable as a principal
14 or liable as though he had done the act.

15 I would also respectfully except
16 to the charge that the Court stated that
17 a money order is a security.

18 I would also respectfully except
19 to the Court's charge that any additions
20 to a blank money order would constitute
21 an alteration, that is, putting in the
22 name of a payee or putting in the stamp
23 of the agency.

24 With respect to the charges which
25 my adversary, the United States Attorney,

1 has given to the Court, I would except
2 to the charge beginning with, "The
3 Government has introduced evidence that
4 the defendant, Jackie L. Harris, has
5 participated in acts of a criminal nature--"

6 That is also an agency-type of
7 charge.

8 I would also except to Request No.
9 3, which says, "A money order is 'false'
10 if it was untrue when made." These were
11 definitions of "false" and "fraudulent."

12 With respect to Request No. 4,
13 I would object to the statement beginning,
14 "The completion of a money order with the
15 amount and the agent's symbol number,"
16 which is a definition of "forgery."

17 And Request No. 5 which begins,
18 "In a case where two or more persons may
19 have participated," I would except to that
20 on the grounds that it apparently is
21 dealing with things outside of this case.

22 Request No. 6, beginning, "In
23 order to aid and abet another to commit
24 a crime --"

25 This is also the principal and

1 agent items which I objected to in the
2 Court's charge. Thank you.

3 THE COURT: The exceptions are
4 noted.

5 I excuse the alternates now.
6 Thank you very much for your services.

7 (Two alternate jurors were excused.)

8 (One marshal was duly sworn.)

9 (At 2:45 P.M., the jury retired to
10 commence their deliberations.)

11 (At 5:55 P.M., a note was received
12 from the jury.)

13 THE COURT: I have a note from the
14 jury and it reads:

15 "Could you please inform us of the
16 following: Does 'involvement' necessarily
17 mean 'intent'?"

18 "Involvement" is a loose and inexact
19 term. It does not mean the same thing as
20 "criminal intent." The statute does not
21 use the term "involvement," nor have I
22 used it in my instructions to the jury.
23 To find this defendant guilty of any of
24 the charges contained in this Indictment,
25 you must find that he had the evil and

1 criminal intent to defraud the person or
2 company to whom the money order was to be
3 presented for cash or for credit on some
4 account in part and for receiving the
5 balance in cash.

6 That is the answer to the question.

7 You may take the jury out to dinner
8 now.

9 (At 5:50 P.M., the jury was escorted
10 to dinner, after which they returned to
11 the jury room at 7:30 P.M. and continued
12 their deliberations.)

13 (At 8:55 P.M., the jury returned
14 to the courtroom.)

15 THE COURT: Your note informs me
16 that you have reached a verdict on the
17 First Count but have not reached a unani-
18 mous verdict on Counts 2, 3, 4 and 5, is
19 that right?

20 THE FOREMAN: That's correct.

21 THE CLERK: How do you find on
22 Count 1?

23 THE FOREMAN: Guilty.

24 THE COURT: I will fix next Monday
25 morning for the date of sentence.

UNITED STATES CIRCUIT COURT OF APPEALS
SECOND CIRCUIT

THE UNITED STATES OF AMERICA,

Respondent,

-VS-

JACKIE L. HARRIS,

Appellant.

AFFIDAVIT OF SERVICE



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200 Times Square Building
Rochester, New York 14614
Telephone: (716) 546-6040

*recd Jean C Wood
U. S. Attorney's Office
April 1, 1975*

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

BARBARA GIANNAVOLA, being
duly sworn, deposes and says:

1. That she resides in the
City of Rochester, New York; is over the age
of 18 years, and is not a party to this
action.

2. That on April 1, 1975,
deponent served the United States Attorney of
the Western District of New York with one
copy of Appellant's brief, at the United
States Court House, 100 State Street, Roch-
ester, New York, by leaving the same with

Jean C. Wood.

Barbara Giannavola

Barbara Giannavola

Sworn to before me this
1st day of April, 1975.

Alfred P. Kremer

ALFRED P. KREMER
Notary Public in the State of New York
MONROE COUNTY, N.Y.
Commission Expires March 23, 1977

UNITED STATES DEPARTMENT OF AGRICULTURE
BUREAU OF PLANT INDUSTRY

THE FOLLOWING IS A LIST OF THE PLANTS

AND THE NAMES OF THE PERSONS WHO HAVE

PLANTED THEM IN THE UNITED STATES

AND THE NAMES OF THE PERSONS WHO HAVE

PLANTED THEM IN THE UNITED STATES

PLANTED IN THE UNITED STATES
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FOUR STAR BRAND

MADE IN U.S.A.

MADE IN U.S.A.